

The 22nd July 1986

No. 9/8/86/Lab./5983.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of Haryana Television Limited 12, Sector 6, Mathura Road, Faridabad :—

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER
LABOUR COURT, FARIDABAD.

Reference No. 453 of 1980

between

V. K. CHIBBER, WORKMAN AND THE RESPONDENT-MANAGEMENT
OF M/S HARYANA TELEVISION LIMITED, 12, SECTOR 6 MATHURA
ROAD, FARIDABAD

Shri S. S. Gupta for the workman.

Shri A. S. Chadda for the respondent-management.

AWARD

This reference No. 453 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/135/78/50250, dated 19th September, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947 existing between Shri V. K. Chibber, workman and the respondent-management of M/s Haryana Television Limited, 12, sector 6, Mathura Road Faridabad. The terms of the reference was :—

Whether termination of services of Shri V. K. Chibber was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the respondent on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined the services of the respondent in the middle of 1975 and worked satisfactorily and his services were terminated by the employer,—vide order, dated 28th August, 1978 which is illegal and unjustified and against the standing orders. No charge-sheet or enquiry was done by the respondent and the mandatory provisions of section 25-F of the Industrial Disputes Act was not complied with. So the termination was illegal and the workman is entitled for his reinstatement with full back wages and continuity of service. According to the written statement the case of the respondent is that the claimant was appointed on 21st July, 1975 Rs. 700 per month and the nature of duty of the claimant were to create sale promotion of the products of the respondent company. So the claimant does not fall under the category of workman as defined under section 2(s) of the Industrial Disputes Act. The claimant's services were transferred by the management from Dehradun to Lucknow but he failed to resume his duty at his new station at Lucknow so he remained willfully absent for more than 1½ months and thus lost his lien on service. The services of the claimant was not terminated. The claimant is gainfully employed elsewhere so he is not entitled for reinstatement. So the reference be rejected.

On the pleadings of the parties, following issues were framed :—

1. Whether the claimant does not fall under the category of workman ? If so to what effect ?
2. Whether the workman remained absent from duty for more than stipulated period and it amounts to voluntary abandonment of service ? If so to what effect ?
3. Whether the workman is gainfully employed ? If so to what effect ?
4. Whether the termination of services of the workman is proper justified and in order ? If not to what relief is he entitled ?

Issue No. 1 was ordered to be treated preliminary issue and my findings on the issues is as under :—

Issue No. 1 :

The representative of the workman argued on this issue that as stated by the workman as WW-1 he joined the services of the respondent in the middle of 1975 as Sales Engineer @ Rs. 400

per month according to the appointment letter issued by the respondent which is Ex. M-1 and he was appointed at Dehradun,—vide Ex. M-14 He was doing the duty of sales and service of the televisions sets and give the receipts to the customers and he also repair the sets at the complaints of the customers on their residences. He sits in the show room and did all the clerical and other works which are required in a show room. So he is a workman and not manager or supervisor. He has further stated in his statement that there was no subordinate under him and he was guided by the orders of the Head Office and he was sent the monthly reports to the Head Office and received the directions from the Head Office. He cannot do any work of his own and he has no authority to remove or appoint any person. He was a service Engineer, doing the work with his own hands. He comes under definition of workman in the meaning of section 2 (s) of the I. D. Act.

The representative of the respondent argued on this issue that as stated by MW-11 the claimant was appointed as Incharge Sales Engineer at Dehradun Branch and he used to manage the whole affairs of the Branch and used to draw salary more than Rs. 500 per month and there are 2 or 3 person working under him on whom he has a direct control. He sanction the leave of his subordinates and also distribute the pay to them. They work under his control and directions. So he was working as Manager as the Branch having managerial powers so he does not come under the definition of workman within the meaning of section 2(s) of the Industrial Disputes Act.

After hearing the arguments of both the parties, and going through the file, I am of the view that the statement of the workman cannot be disbelieved as he worked as service engineer at the branch and repair and selling the television sets produced by the management. He used to prepare the bills for the customers on the sale of television and also prepared the other documents required under the law. He also sent the monthly reports to the Head Office which was a clerical job and not a managerial job and he comes under the scope of section 2(s) of the Industrial Disputes Act, and was a workman. So the preliminary issue No. 1 is decided in favour of the workman and against the respondent.

After deciding the preliminary issue in favour of the workman the parties were given the opportunity to lead their evidence on other issues. The representatives of both the parties stated that they did not want to lead any evidence in this case. The evidence given by both the parties may be read for other issues. So after their statement my findings on all others issues is as under :—

Issue No. 2

Issue No. 2 is whether the workman absented himself for more than stipulated period ? If so, to what effect ? The representative of the respondent argued on this that the workman was transferred from Dehradun to Lucknow,—vide ex-M-3 on 18th May, 1978 and the other letter dated 19th June, 1978 but the workman did not join the service and he sent a letter that he has not received the keys of the Lucknow Office. The letter was given to the workman Ex. M-4 to direct him to take the keys from Shri M. L. Sharma. After that the workman gave an application for leave which was rejected by the respondent,—vide Ex. M-5 and he was directed to report for Lucknow immediately and if he failed to resume duty within three days disciplinary action will be taken against him. After this letter the workman sent a letter Ex. M-6 asking the respondent to increase the salary and his designation. He has also stated in that letter that he prefer to resign than to move to Lucknow, if the above points are not clarified by the respondent upto 8th July, 1978. After this transfer the claimant took one month time in handing over the charge and applied for leave which was not granted by the respondent, vide letter dated 17th July, 1978 and the claimant was informed to report for duty within three days. in spite of following the instruction of the respondent, the claimant wrote a letter taking flimsy stand and made a demand that reasons for his transfer should be communicated to him and that some body be deputed to give charge to him at Lucknow. The respondent asked the claimant to report for duty immediately otherwise serious action will be taken against him but he refused to accept that letter which is Ex. M-8 and M-9. A letter dated 7th August, 1978 Ex. M-7 was given to the workman stating therein that he has failed to join the duty at Lucknow knowing fully well that the office is lying closed and the customers are debarred from servicing facilities. A letter dated 9th August, 1978 Ex. M-10 was sent to the claimant through registered post calling the explanation of the workman that why his services should not be terminated when he has failed to carry out the instructions of the respondent. The claimant sent letter Ex-M-11 dated 10th August, 1978 along with the medical certificate Ex. M-12 but after considering of the circumstances about the claimant and his will-full avoiding the instructions of the respondent, his services were terminated,—vide Ex. M-14 dated 28th August, 1978. He further argued that as stated by the respondent witness MW-1 there were so many complaints against the workman for the misappropriation and mishandling the customers which are Ex. M-16 to M-32. There were serious allegations against the workman and he knew about the complaint which were also informed to the workman. So the workman knowingly did not join the services at Lucknow at his transfer place because he knew that there are so many complaints against him and there will be

serious action against him after the enquiry so he chooses not to join his duty at his new transfer place. So he remained absent from duty for more than stipulated period and it amounts to voluntarily abandonment of service.

The representative of the workman argued on this issue the workman was working properly at Dehradun and he was transferred to Lucknow to harass him. The workman gave the application for leave with medical certificate. The respondent rejected the application knowing fully well that the workman is ill and cannot join the duty at his new place of posting. The workman sent the application Ex. M-11 dated 10th August, 1978 stating therein that he is unable to join the duty due to ill health. He also gave Ex. M-12 which is clear proof that the workman was ill and he could not join the duty in this state of affairs. So his termination is illegal and without giving any opportunity to the workman so his inability to join his duty.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman has failed to prove why he has not joined the service after transfer for such a long time. He was given so many letters to join the duty at Lucknow but he failed to join his duty at Lucknow at his new place of transfer. He has only produced the medical certificate which is also not proved. He has stated in his cross examination that he does not know what disease he is having at the time of illness. He has not produced any bills of medicine to prove that he was ill. As he is avoiding to join his duty at Lucknow after a long time he sent a medical certificate for leave which was refused by the respondent because they knew that he is not ill and sending the medical certificate only to prolong the time. They sent the letter to the workman that the Lucknow office is closed for the last two months at it gave the bad name to the respondent but the workman did not want to join the duty at Lucknow and is very clear from the letter Ex. M-6 which contained eight pages in which he has asked why he was transferred to Lucknow and demanded the rise in salary and other facilities, which clearly shows that his contention was not to join the duty at Lucknow so the respondent has fully proved that the workman remained absent from duty without any reasonable cause for more than stipulated period which amounts to voluntarily abandonment of service. So this issue is decided in favour of the respondent and against the workman.

Issue No. 3 and 4:

After deciding the issue No. 2 in favour of the respondent, there is no need to discuss these issues for the gainful employment and as per reference. When it has been decided that the workman abandoned his services voluntarily then there is no question of termination of service of the workman and both the issues are decided against the workman and in favour of the respondent and the workman is not entitled to any relief.

This be read in answer to this reference.

Dated, the 30th November, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Faridabad,

Endst. No. 2514, dated the 3rd December, 1982.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Faridabad.

The 24th July, 1986

No. 9/6/86-6Lab./5597.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s (i) Controller, Haryana Roadways, Chandigarh (ii) G. M., Haryana Roadways, Jind:

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 91 of 1984

SUBE SINGH, WORKMAN AND THE MANAGEMENT OF THE MESSRS CONTROLLER,
HARYANA ROADWAYS, CHANDIGARH (ii) G. M., HARYANA ROADWAYS, JIND.

Present:

Shri Tejinder Singh, for workman.
Shri Radhey Sham, ADA for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Sube Singh, son of Shri Lal Chand, Village and Post Office Pagar, District Jind and Messrs G. M. Haryana Roadways, Jind, etc. to this court. The terms of the reference are as under :—

Whether termination of services of Shri Sube Singh, workman is justified and correct. If not, to what relief is he entitled ?

Workman through his statement of claim alleged that he remained in the service of respondent-management for two years and nine months. Thereafter his services were terminated by the respondents on 15th December, 1978 without any fair and proper enquiry against the rules of punishment and appeal. It was further alleged that Inquiry Officer himself acted as a Judge as well as prosecutor. He was not allowed to cross-examine the witnesses and produce defence evidence. It was also alleged that he was not supplied copies of documents, copy of enquiry proceedings and was not even heard in person by G. M. Haryana Roadways, Depot Jind. Before passing termination order he prayed that the termination order be declared illegal and unjust and he be reinstated with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that there were serious allegations of embezzlement against workman Sube Singh. On 28th January, 1977 workman was caught by Shri Ramesh Chander Sharma for having embezzled a sum of Rs 0.70 nP. Secondly, on 28th September, 1976 he was checked by inspector Inder Singh and was found having embezzled a sum of Rs 3. On 22nd October, 1976 he was again checked by Shri Tara Chand, Inspector and was found having embezzled a sum of Rs 0.60 nP. Fourthly on 22nd November, 1976 he was intercepted by Shri Tara Chand, Inspector for having embezzled a sum of Rs 2.85 and fifthly, on 12th October, 1976 he was intercepted by Shri Prithi Singh and Shri M.S. Huda for having embezzled a sum of Rs 10.40. It was contended by the management that a fair and proper enquiry was conducted against the workman and full opportunity of cross-examination, leading defence evidence, and of personal hearing was afforded to the workman. Copy of enquiry proceedings was supplied to him. Copy of list of witnesses along with charge-sheet was also given to him. It was further contended that termination order was passed according to rules and this claim is baseless it be rejected.

Workman filed replication through which he controverted the allegations of the respondent-management.

On the pleadings of the parties the following issues were framed :

Issues :

- 1 Whether termination order dated 15th December, 1978 regarding the services of workman Sube Singh is according to law, if not its effect ? OPM
- 2 Relief.

Management in support of its case examined MW-1. Shri O.P. Sharma who stated that in January, 1970 he was posted as Station Supervisor in Haryana Roadways at Depot Jind. He was appointed as a Inquiry Officer in this case. He issued notices to both the parties on 20th March, 1978 he recorded statement of Shri Prithi Singh and Shri M. S. Huda Inspector workman was afforded an full opportunity to cross-examine the witnesses which he availed of. Enquiry proceedings are in 14 pages which is Ex-M-1. Thereafter he afforded an opportunity to workman to lead defence evidence but he failed to examine any witness. Statement to this effect of the workman was recorded which bears his signatures thereafter, he submitted his report Ex-M-2 to G.M. Haryana Roadways Depot Jind. In cross-examination he stated that the Department did not examine any passengers from whom the workman had taken fare and had not issued tickets to them.

Shri Prithi Singh Inspector appeared as MW-2 and he stated that on 19th October, 1976 he was posted in flying squad of state of Transport Commissioner. He boarded bus No. 1506 HRJ along with Shri M. S. Huda. It was checked at Nangal and found that two passengers from Ambala to Nangal were sitting without tickets and similarly four passengers from Ambala to Esmalabad were also sitting without tickets while Sube Singh present workman had charged fare from them. He took unpunched tickets from the Conductor and asked him to sign the same but Conductor refused to do so. So he attached these six tickets along with his report which he submitted to G.M. Haryana Roadways, Depot Jind.

Shri Satbir, Clerk, Haryana Roadways was examined as MW-3 he stated that he had been dealing with the personal files of Conductors Personal file of Shri Sube Singh has been brought by him today. He stated that a charge-sheet was issued to workman. His rep'y was received which was found unsatisfactory on the basis of the same enquiry was ordered, show cause notice was issued to him which the workman replied and thereafter Inquiry Officer conducted the enquiry proceedings.

Sube Singh, workman examined himself as AW-1. He stated that he joined as a Conductor on 9th February, 1976 and was terminated on 15th December, 1980 without proper and fair enquiry. He stated that Inquiry Officer did not record statement of any passenger nor his cash was checked. He

further stated that when the Inspector checked him he was issuing the tickets to the passengers, the Inspector took unpunched tickets from him and made false complaint against him to G.M. Haryana Roadways, Jind. He further stated that he was not given proper opportunity of cross-examination of witnesses nor he was allowed to lead defence evidence nor G.M. heard him in person. In cross-examination he admitted that second show cause notice was received by him. He submitted reply of that show cause notice to G.M. He also admitted that G.M. Haryana Roadways, Jind also heard him in person before passing termination order.

In view of the above evidence it has become clear that only singal charge was probed into by the respondent against the workman by appointing an Inquiry Officer and rests of the four charges were not handed over to the Inquiry Officer for conducting an enquiry against workman.

I have perused the enquiry file and proceedings which have been recorded in a most proper and fair manner. Inquiry Officer during enquiry proceedings has examined Shri M.S. Huda, Inspector as well as Shri Prithi Singh, Inspector. Both stated that they checked the bus of the workman at Nangal and found six passengers sitting without tickets. The Conductor had charged Rs. 10.40 from them and did not issue any ticket to them. They took unpunched tickets from the conductor asked him to sign on the tickets which he refused and then he prepared this complaint against the conductor and submitted to G.M. Haryana Roadways, Jind.

The main arguments of Shri Tejinder Singh that no statement of passenger was recorded and no cash was chacked are not tenable because both the Inspectors were examined in enquiry. They have deposed against the workman who are not at all enemical towards workman in any manner. In view of Judicial pronouncement 1977 SLR Vol-1, page 750 the evidence of Inspectors has to be believed and cannot be discarded in any way.

Workman has himself admitted in his cross-examination in this court that show cause notices were received by him which he replied. From the enquiry proceedings it is evident that he cross-examined the witnesses at length. He further made statement that he does not want to lead defence evidence. He also admitted that he was given personal hearing by G.M. Haryana Roadways before passing his termination order. Moreover on 14th July, 1977 he submitted an application to G.M. Haryana Roadways, Jind that he may be excused for his mistakes he will not repeat any mistake in future if he failed to improve himself then he will receive the punishment, imposed upon him.

In view of the above evidence and my discussions. I am of the considered opinion that the workman has been in the habit of making embezzlement during the discharge of official duties as it is evident from the allegations against him. Only one case of embezzlement was enquired into against the workman by the Inquiry Officer in which he was found at fault, which resulted in the termination of services of the workman.

From the statement of the Inquiry Officer MW-1. Shri O.P. Sharma and from the enquiry proceedings Ex.N-2 it is proved to the hilt that enquiry proceedings were conducted in proper and fair manner copy of enquiry report was supplied to workman. Thereafter ; show cause notices were issued to him which were replied by the workman. G.M. afforded an opportunity of personal hearing to the workman and thereafter terminated his services. Workman want in appeal to S.T.C. which was also rejected. Accordingly this issue is decided, in favour of management, against workman.

Issue No. 2.

In view of my findings on issue No. 1 I hold that enquiry proceedings were fair and proper. Workman was hold liable for having embezzled a sum of Rs 10.40. So the termination order passed by G.M. Haryana Roadways, depot Jind is just and legal, so I pass award regarding the controversy between the parties accordingly.

Dated the 2nd June, 1986.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1603, dated the 6th June, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.